Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-27782 July 31, 1970

OCTAVIO A. KALALO, plaintiff-appellee,
vs.
ALFREDO J. LUZ, defendant-appellant.

Amelia K. del Rosario for plaintiff-appellee.

Pelaez, Jalandoni & Jamir for defendant-appellant.

ZALDIVAR, *J.:*

Appeal from the decision, dated, February 10, 1967, of the Court of First Instance of Rizal (Branch V, Quezon City) in its Civil Case No. Q-6561.

On November 17, 1959, plaintiff-appellee Octavio A. Kalalo hereinafter referred to as *appellee*), a licensed civil engineer doing business under the firm name of O. A. Kalalo and Associates, entered into an agreement (Exhibit A) [1] with defendant-appellant Alfredo J . Luz (hereinafter referred to as *appellant*), a licensed architect, doing business under firm name of A. J. Luz and Associates, whereby the former was to render engineering design services to the latter for fees, as stipulated in the agreement. The services included design computation and sketches, contract drawing and technical specifications of all engineering phases of the project designed by O. A. Kalalo and Associates bill of quantities and cost estimate, and consultation and advice during construction relative to the work. The fees agreed upon were percentages of the architect's fee, to wit: structural engineering, 12-½%; electrical engineering, 2-½%. The agreement was subsequently supplemented by a "clarification to letter-proposal" which provided, among other things, that "the schedule of engineering fees in this agreement does not cover the following: ... D. Foundation soil exploration, testing and evaluation; E. Projects that are principally engineering works such as industrial plants, ..." and "O. A. Kalalo and Associates reserve the right to increase fees on projects ,which cost less than P100,000 ...." [2] Pursuant to said agreement, appellee rendered engineering services to appellant in the following projects:

(a) Fil-American Life Insurance Building at Legaspi City;

(b) Fil-American Life Insurance Building at Iloilo City;

(c) General Milling Corporation Flour Mill at Opon Cebu;

(d) Menzi Building at Ayala Blvd., Makati, Rizal;

(e) International Rice Research Institute, Research center Los Baños, Laguna;

(f) Aurelia's Building at Mabini, Ermita, Manila;

(g) Far East Bank's Office at Fil-American Life Insurance Building at Isaac Peral Ermita, Manila;

(h) Arthur Young's residence at Forbes Park, Makati, Rizal;

(i) L & S Building at Dewey Blvd., Manila; and

(j) Stanvac Refinery Service Building at Limay, Bataan.

On December 1 1, '1961, appellee sent to appellant a statement of account (Exhibit "1"), [3] to which was attached an itemized statement of defendant-appellant's account (Exh. "1-A"), according to which the total engineering fee asked by appellee for services rendered amounted to P116,565.00 from which sum was to be deducted the previous payments made in the amount of P57,000.00, thus leaving a balance due in the amount of P59,565.00.

On May 18, 1962 appellant sent appellee a resume of fees due to the latter. Said fees, according to appellant. amounted to P10,861.08 instead of the amount claimed by the appellee. On June 14, 1962 appellant sent appellee a check for said amount, which appellee refused to accept as full payment of the balance of the fees due him.

On August 10, 1962, appellee filed a complaint against appellant, containing four causes of action. In the first cause of action, appellee alleged that for services rendered in connection with the different projects therein mentioned there was due him fees in sum s consisting of $28,000 (U.S.) and P100,204.46, excluding interests, of which sums only P69,323.21 had been paid, thus leaving unpaid the $28,000.00 and the balance of P30,881.25. In the second cause of action, appellee claimed P17,000.00 as consequential and moral damages; in the third cause of action claimed P55,000.00 as moral damages, attorney's fees and expenses of litigation; and in the fourth cause of action he claimed P25,000.00 as actual damages, and also for attorney's fees and expenses of litigation.

In his answer, appellant admitted that appellee rendered engineering services, as alleged in the first cause of action, but averred that some of appellee's services were not in accordance with the agreement and appellee's claims were not justified by the services actually rendered, and that the aggregate amount actually due to appellee was only P80,336.29, of which P69,475.21 had already been paid, thus leaving a balance of only P10,861.08. Appellant denied liability for any damage claimed by appellee to have suffered, as alleged in the second, third and fourth causes of action. Appellant also set up affirmative and special defenses, alleging that appellee had no cause of action, that appellee was in estoppel because of certain acts, representations, admissions and/or silence, which led appellant to believe certain facts to exist and to act upon said facts, that appellee's claim regarding the Menzi project was premature because appellant had not yet been paid for said project, and that appellee's services were not complete or were performed in violation of the agreement and/or otherwise unsatisfactory. Appellant also set up a counterclaim for actual and moral damages for such amount as the court may deem fair to assess, and for attorney's fees of P10,000.00.

Inasmuch as the pleadings showed that the appellee's right to certain fees for services rendered was not denied, the only question being the assessment of the proper fees and the balance due to appellee after deducting the admitted payments made by appellant, the trial court, upon agreement of the parties, authorized the case to be heard before a Commissioner. The Commissioner rendered a report which, in resume, states that the amount due to appellee was $28,000.00 (U.S.) as his fee in the International Research Institute Project which was twenty percent (20%) of the $140,000.00 that was paid to appellant, and P51,539.91 for the other projects, less the sum of P69,475.46 which was already paid by the appellant. The Commissioner also recommended the payment to appellee of the sum of P5,000.00 as attorney's fees.

At the hearing on the Report of the Commissioner, the respective counsel of the parties manifested to the court that they had no objection to the findings of fact of the Commissioner contained in the Report, and they agreed that the said Report posed only two legal issues, namely: (1) whether under the facts stated in the Report, the doctrine of estoppel would apply; and (2) whether the recommendation in the Report that the payment of the amount. due to the plaintiff in dollars was legally permissible, and if not, at what rate of exchange it should be paid in pesos. After the parties had submitted their respective memorandum on said issues, the trial court rendered its decision dated February 10, 1967, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is rendered in favor of plaintiff and against the defendant, by ordering the defendant to pay plaintiff the sum of P51,539.91 and $28,000.00, the latter to be converted into the Philippine currency on the basis of the current rate of exchange at the time of the payment of this judgment, as certified to by the Central Bank of the Philippines, from which shall be deducted the sum of P69,475.46, which the defendant had paid the plaintiff, and the legal rate of interest thereon from the filing of the complaint in the case until fully paid for; by ordering the defendant to pay to plaintiff the further sum of P8,000.00 by way of attorney's fees which the Court finds to be reasonable in the premises, with costs against the defendant. The counterclaim of the defendant is ordered dismissed.

From the decision, this appeal was brought, directly to this Court, raising only questions of law.

During the pendency of this appeal, appellee filed a petition for the issuance of a writ of attachment under Section 1 (f) of Rule 57 of the Rules of Court upon the ground that appellant is presently residing in Canada as a permanent resident thereof. On June 3, 1969, this Court resolved, upon appellee's posting a bond of P10,000.00, to issue the writ of attachment, and ordered the Provincial Sheriff of Rizal to attach the estate, real and personal, of appellant Alfredo J. Luz within the province, to the value of not less than P140,000.00.

The appellant made the following assignments of errors:

> I. The lower court erred in not declaring and holding that plaintiff-appellee's letter dated December 11, 1961 (Exhibit "1") and the statement of account (Exhibit "1-A") therein enclosed, had the effect, cumulatively or alternatively, of placing plaintiff-appellee in estoppel from thereafter modifying the

> representations made in said exhibits, or of making plaintiff-appellee otherwise bound by said representations, or of being of decisive weight in determining the true intent of the parties as to the nature and extent of the engineering services rendered and/or the amount of fees due.
>
> II. The lower court erred in declaring and holding that the balance owing from defendant-appellant to plaintiff-appellee on the IRRI Project should be paid on the basis of the rate of exchange of the U.S. dollar to the Philippine peso at the time of payment of judgment. .
>
> III. The lower court erred in not declaring and holding that the aggregate amount of the balance due from defendant-appellant to plaintiff-appellee is only P15,792.05.
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> IV. The lower court erred in awarding attorney's fees in the sum of P8,000.00, despite the commissioner's finding, which plaintiff-appellee has accepted and has not questioned, that said fee be only P5,000.00; and
>
> V. The lower court erred in not granting defendant-appellant relief on his counter-claim.

1. In support of his first assignment of error appellant argues that in Exhibit 1-A, which is a statement of accounts dated December 11, 1961, sent by appellee to appellant, appellee specified the various projects for which he claimed engineering fees, the precise amount due on each particular engineering service rendered on each of the various projects, and the total of his claims; that such a statement barred appellee from asserting any claim contrary to what was stated therein, or from taking any position different from what he asserted therein with respect to the nature of the engineering services rendered; and consequently the trial court could not award fees in excess of what was stated in said statement of accounts. Appellant argues that for estoppel to apply it is not necessary, contrary to the ruling of the trial court, that the appellant should have *actually* relied on the representation, but that it is sufficient that the representations were intended to make the defendant act there on; that assuming *arguendo* that Exhibit 1-A did not put appellee in estoppel, the said Exhibit 1-A nevertheless constituted a formal admission that would be binding on appellee under the law on evidence, and would not only belie any inconsistent claim but also would discredit any evidence adduced by appellee in support of any claim inconsistent with what appears therein; that, moreover, Exhibit 1-A, being a statement of account, establishes *prima facie* the accuracy and correctness of the items stated therein and its correctness can no longer be impeached except for fraud or mistake; that Exhibit 1-A furthermore, constitutes appellee's own interpretation of the contract between him and appellant, and hence, is conclusive against him.

On the other hand, appellee admits that Exhibit 1-A itemized the services rendered by him in the various construction projects of appellant and that the total engineering fees charged therein was P116,565.00, but maintains that he was not in estoppel: first, because when he prepared Exhibit 1-A he was laboring under an innocent mistake, as found by the trial court; second, because appellant was not ignorant of the services actually rendered by appellee and the fees due to the latter under the original agreement, Exhibit "A."

We find merit in the stand of appellee.

The statement of accounts (Exh. 1-A) could not estop appellee, because appellant did not rely thereon as found by the Commissioner, from whose Report we read:

> While it is true that plaintiff vacillated in his claim, yet, defendant did not in anyway rely or believe in the different claims asserted by the plaintiff and instead insisted on a claim that plaintiff was only entitled to P10,861.08 as per a separate resume of fees he sent to the plaintiff on May 18, 1962 (See Exhibit 6). [4]

The foregoing finding of the Commissioner, not disputed by appellant, was adopted by the trial court in its decision. Under article 1431 of the Civil Code, in order that estoppel may apply the person, to whom representations have been made and who claims the estoppel in his favor must have relied or acted on such representations. Said article provides:

> Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

An essential element of estoppel is that the person invoking it has been influenced and has relied on the representations or conduct of the person sought to be estopped, and this element is wanting in the instant case. In *Cristobal vs. Gomez*, [5] this Court held that no estoppel based on a document can be invoked by one who has not been mislead by the false statements contained therein. And in *Republic of the Philippines vs. Garcia, et al.,* [6] this Court ruled that there is no estoppel when the statement or action invoked as its basis did not mislead the adverse party-Estoppel has been characterized as harsh or odious and not favored in law. [7] When misapplied, estoppel becomes a most effective weapon to accomplish an injustice, inasmuch as it shuts a man's mouth from speaking the truth and debars the truth in a particular case. [8] Estoppel cannot be sustained by mere argument or doubtful inference: it must be clearly proved in all its

essential elements by clear, convincing and satisfactory evidence. [9] No party should be precluded from making out his case according to its truth unless by force of some positive principle of law, and, consequently, estoppel in pains must be applied strictly and should not be enforced unless substantiated in every particular. [10]

The essential elements of estoppel in pais may be considered in relation to the party sought to be estopped, and in relation to the party invoking the estoppel in his favor. As related to the party to be estopped, the essential elements are: (1) conduct amounting to false representation or concealment of material facts or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that his conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as the facts in questions; (2) (reliance, in good faith, upon the conduct or statements of the party to be estopped; (3) action or inaction based thereon of such character as To change the position or status of the party claiming the estoppel, to his injury, detriment or prejudice. [11]

The first essential element in relation to the party sought to be estopped does not obtain in the instant case, for, as appears in the Report of the Commissioner, appellee testified "that when he wrote Exhibit 1 and prepared Exhibit 1-A, he had not yet consulted the services of his counsel and it was only upon advice of counsel that the terms of the contract were interpreted to him resulting in his subsequent letters to the defendant demanding payments of his fees pursuant to the contract Exhibit A." [12] This finding of the Commissioner was adopted by the trial court. [13] It is established , therefore, that Exhibit 1-A was written by appellee through ignorance or mistake. Anent this matter, it has been held that if an act, conduct or misrepresentation of the party sought to be estopped is due to ignorance founded on innocent mistake, estoppel will not arise. [14] Regarding the essential elements of estoppel in relation to the party claiming the estoppel, the first element does not obtain in the instant case, for it cannot be said that appellant did not know, or at least did not have the means of knowing, the services rendered to him by appellee and the fees due thereon as provided in Exhibit A. The second element is also wanting, for, as adverted to, appellant did not rely on Exhibit 1-A but consistently denied the accounts stated therein. Neither does the third element obtain, for appellant did not act on the basis of the representations in Exhibit 1-A, and there was no change in his position, to his own injury or prejudice.

Appellant, however, insists that if Exhibit 1-A did not put appellee in estoppel, it at least constituted an admission binding upon the latter. In this connection, it cannot be gainsaid that Exhibit 1-A is not a judicial admission. Statements which are not estoppels nor judicial admissions have no quality of conclusiveness, and an opponent. whose admissions have been offered against him may offer any evidence which serves as an explanation for his former assertion of what he now denies as a fact. This may involve the showing of a mistake. Accordingly, in *Oas vs. Roa*, [16] it was held that when a party to a suit has made an admission of any fact pertinent to the issue involved, the admission can be received against him; but such an admission is not conclusive against him, and he is entitled to present evidence to overcome the effect of the admission. Appellee did explain, and the trial court concluded, that Exhibit 1-A was based on either his ignorance or innocent mistake and he, therefore, is not bound by it.

Appellant further contends that Exhibit 1-A being a statement of account, establishes *prima facie* the accuracy and correctness of the items stated therein. If prima facie, as contended by appellant, then it is not absolutely conclusive upon the parties. An account stated may be impeached for fraud, mistake or error. In American Decisions, Vol. 62, p. 95, cited as authority by appellant himself. we read thus:

> An account stated or settled is a mere admission that the account is correct. It is not an estoppel. The account is still open to impeachment for mistakes or errors. Its effect is to establish, *prima facie*, the accuracy of the items without other proof; and the party seeking to impeach it is bound to show affirmatively the mistake or error alleged. The force of the admission and the strength of the evidence necessary to overcome it will depend upon the circumstances of the case.

In the instant case, it is Our view that the ignorance mistake that attended the writing of Exhibit 1-A by appellee was sufficient to overcome the *prima facie* evidence of correctness and accuracy of said Exhibit 1-A.

Appellant also urges that Exhibit 1-A constitutes appellee's own interpretation of the contract, and is, therefore, conclusive against him. Although the practical construction of the contract by one party, evidenced by his words or acts, can be used against him in behalf of the other party, [17] yet, if one of the parties carelessly makes a wrong interpretation of the words of his contract, or performs more than the contract requires (as reasonably interpreted independently of his performance), as happened in the instant case, he should be entitled to a restitutionary remedy, instead of being bound to continue to his erroneous interpretation or his erroneous performance and "the other party should not be permitted to profit by such mistake unless he can establish an estoppel by proving a material change of position made in good faith. The rule as to practical construction does not nullify the equitable rules with respect to performance by mistake." [18] In the instant case, it has been shown that Exhibit 1-A was written through mistake by appellee and that the latter is not estopped by it. Hence, even if said Exhibit 1-A be considered as practical construction of the contract by appellee, he cannot be bound by such erroneous interpretation. It has been held that if by mistake the parties followed a practice in violation of the terms of the agreement, the court should not perpetuate the error. [19]

2. In support of the second assignment of error, that the lower court erred in holding that the balance from appellant on the IRRI project should be paid on the basis of the rate of exchange of the U.S. dollar to the Philippine peso at the time of payment of the judgment, appellant contends: first, that the official rate at the time appellant received his architect's fees for the IRRI project, and correspondingly his obligation to appellee's fee on August 25, 1961, was P2.00 to $1.00, and cites in support thereof Section 1612 of the Revised Administrative Code, Section 48 of Republic Act 265 and Section 6 of Commonwealth Act No. 699; second, that the lower court's conclusion that the rate of exchange to be applied in the conversion of the $28,000.00 is the current rate of exchange at the time the judgment shall be satisfied was based solely on a mere presumption of the trial court that the defendant did not convert, there being no showing to that effect, the dollars into Philippine currency at the official rate, when the legal presumption should be that the dollars were converted at the official rate of $1.00 to P2.00 because on August 25, 1961, when the IRRI project became due and payable, foreign exchange controls were in full force and effect, and *partial decontrol* was effected only afterwards, during the Macapagal administration; third, that the other ground advanced by the lower court for its ruling, to wit, that appellant committed a breach of his obligation to turn over to the appellee the engineering fees received in U.S. dollars for the IRRI project, cannot be upheld, because there was no such breach, as proven by the fact that appellee never claimed in Exhibit 1-A that he should be paid in dollars; and there was no provision in the basic contract (Exh. "A") that he should be paid in dollars; and, finally, even if there were such provision, it would have no binding effect under the provision of Republic Act 529; that, moreover, it cannot really be said that no payment was made on that account for appellant had already paid P57,000.00 to appellee, and under Article 125 of the Civil Code, said payment could be said to have been applied to the fees due from the IRRI project, this project being the biggest and this debt being the most onerous.

In refutation of appellant's argument in support of the second assignment of error, appellee argues that notwithstanding Republic Act 529, appellant can be compelled to pay the appellee in dollars in view of the fact that appellant received his fees in dollars, and appellee's fee is 20% of appellant's fees; and that if said amount is be converted into Philippine Currency, the rate of exchange should be that at the time of the execution of the judgment. [20]

We have taken note of the fact that on August 25, 1961, the date when appellant said his obligation to pay appellee's fees became due, there was two rates of exchange, to wit: the preferred rate of P2.00 to $1.00, and the free market rate. It was so provided in Circular No. 121 of the Central Bank of the Philippines, dated March 2, 1961. amending an earlier Circular No. 117, and in force until January 21, 1962 when it was amended by Circular No. 133, thus:

> 1. All foreign exchange receipts shall be surrendered to the Central Bank of those authorized to deal in foreign exchange as follows:
>
> Percentage of Total to be surrendered at
>
> Preferred: Free Market Rate: Rate:
>
> (a) Export Proceeds, U.S. Government Expenditures invisibles other than those specifically mentioned below. 25 75
>
> (b) Foreign Investments, Gold Proceeds, Tourists and Inward Remittances of Veterans and Filipino Citizens; and Personal Expenses of Diplomatic Per personnel ..... 100" [21]

The amount of $140,000.00 received by appellant foil the International Rice Research Institute project is not within the scope of sub-paragraph (a) of paragraph No. 1 of Circular No. 121. Appellant has not shown that 25% of said amount had to be surrendered to the Central Bank at the preferred rate because it was either export proceeds, or U.S. Government expenditures, or invisibles not included in sub-paragraph (b). Hence, it cannot be said that the trial court erred in presuming that appellant converted said amount at the free market rate. It is hard to believe that a person possessing dollars would exchange his dollars at the preferred rate of P2.00 to $1.00, when he is not obligated to do so, rather than at the free market rate which is much higher. A person is presumed to take ordinary care of his concerns, and that the ordinary course of business has been followed. [22]

Under the agreement, Exhibit A, appellee was entitled to 20% of $140,000.00, or the amount of $28,000.00. Appellee, however, cannot oblige the appellant to pay him in dollars, even if appellant himself had received his fee for the IRRI project in dollars. This payment in dollars is prohibited by Republic Act 529 which was enacted on June 16, 1950. Said act provides as follows:

> SECTION 1. Every provision contained in, or made with respect to, any obligation which provision purports to give the obligee the right to require payment in gold or in a particular kind of coin or currency other than Philippine currency or in an amount of money of the Philippines measured thereby, be as it is hereby declared against public policy, and null, void and of no effect, and no such

> provision shall be contained in, or made with respect to, any obligation hereafter incurred. Every obligation heretofore or here after incurred, whether or not any such provision as to payment is contained therein or made with respect thereto, shall be discharged upon payment in any coin or currency which at the time of payment is legal tender for public and private debts: *Provided*, That, (a) if the obligation was incurred prior to the enactment of this Act and required payment in a particular kind of coin or currency other than Philippine currency, it shall be discharged in Philippine currency measured at the prevailing rate of exchange at the time the obligation was incurred, (b) except in case of a loan made in a foreign currency stipulated to be payable in the same currency in which case the rate of exchange prevailing at the time of the stipulated date of payment shall prevail. All coin and currency, including Central Bank notes, heretofore or hereafter issued and declared by the Government of the Philippines shall be legal tender for all debts, public and private.

Under the above-quoted provision of Republic Act 529, if the obligation was incurred *prior to the enactment* of the Act and require payment in a particular kind of coin or currency other than the Philippine currency the same shall be discharged in Philippine currency measured at the prevailing *rate of exchange at the time the obligation was incurred*. As We have adverted to, Republic Act 529 was enacted on June 16, 1950. In the case now before Us the obligation of appellant to pay appellee the 20% of $140,000.00, or the sum of $28,000.00, accrued on August 25, 1961, or after the enactment of Republic Act 529. It follows that the provision of Republic Act 529 which requires payment at the prevailing rate of exchange when the obligation was incurred cannot be applied. Republic Act 529 does not provide for the rate of exchange for the payment of obligation incurred after the enactment of said Act. The logical Conclusion, therefore, is that the rate of exchange should be that prevailing at the time of payment. This view finds support in the ruling of this Court in the case of *Engel vs. Velasco & Co*. [2] [3] where this Court held that even if the obligation assumed by the defendant was to pay the plaintiff a sum of money expressed in American currency, the indemnity to be allowed should be expressed in Philippine currency at the rate of exchange at the time of judgment rather than at the rate of exchange prevailing on the date of defendant's breach. This is also the ruling of American court as follows:

> The value in domestic money of a payment made in foreign money is fixed with respect to the rate of exchange at the time of payment. (70 CJS p. 228)
>
> According to the weight of authority the amount of recovery depends upon the current rate of exchange, and not the par value of the particular money involved. (48 C.J. 605-606)
>
> The value in domestic money of a payment made in foreign money is fixed in reference to the rate of exchange at the time of such payment. (48 C.J. 605)

It is Our considered view, therefore, that appellant should pay the appellee the equivalent in pesos of the $28,000.00 at the free market rate of exchange at the time of payment. And so the trial court did not err when it held that herein appellant should pay appellee $28,000.00 "to be converted into the Philippine currency on the basis of the current rate of exchange at the time of payment of this judgment, as certified to by the Central Bank of the Philippines, ..." [2] [4]

Appellant also contends that the P57,000.00 that he had paid to appellee should have been applied to the due to the latter on the IRRI project because such debt was the most onerous to appellant. This contention is untenable. The Commissioner who was authorized by the trial court to receive evidence in this case, however, reports that the appellee had not been paid for the account of the $28,000.00 which represents the fees of appellee equivalent to 20% of the $140,000.00 that the appellant received as fee for the IRRI project. This is a finding of fact by the Commissioner which was adopted by the trial court. The parties in this case have agreed that they do not question the finding of fact of the Commissioner. Thus, in the decision appealed from the lower court says:

> At the hearing on the Report of the Commissioner on February 15, 1966, the counsels for both parties manifested to the court that they have no objection to the findings of facts of the Commissioner in his report; and agreed that the said report only poses two (2)legal issues, namely: (1) whether under the facts stated in the Report, the doctrine of estoppel will apply; and (2) whether the recommendation in the Report that the payment of amount due to the plaintiff in dollars is permissible under the law, and, if not, at what rate of exchange should it be paid in pesos (Philippine currency) .... [2] [5]

In the Commissioner's report, it is spetifically recommended that the appellant be ordered to pay the plaintiff the sum of "$28,000. 00 or its equivalent as the fee of the plaintiff under Exhibit A on the IRRI project." It is clear from this report of the Commissioner that no payment for the account of this $28,000.00 had been made. Indeed, it is not shown in the record that the peso equivalent of the $28,000.00 had been fixed or agreed upon by the parties at the different times when the appellant had made partial payments to the appellee.

3. In his third assignment of error, appellant contends that the lower court erred in not declaring that the aggregate amount due from him to appellee is only P15,792.05. Appellant questions the propriety or correctness of most of the items of fees that were found by the Commissioner to be due to appellee for services rendered. We

believe that it is too late for the appellant to question the propriety or correctness of those items in the present appeal. The record shows that after the Commissioner had submitted his report the lower court, on February 15, 1966, issued the following order:

> When this case was called for hearing today on the report of the Commissioner, the counsels of the parties manifested that they have no objection to the findings of facts in the report. However, the report poses only legal issues, namely: (1) whether under the facts stated in the report, the doctrine of estoppel will apply; and (2) whether the recommendation in the report that the alleged payment of the defendant be made in dollars is permissible by law and, if not, in what rate it should be paid in pesos (Philippine Currency). For the purpose of resolving these issues the parties prayed that they be allowed to file their respective memoranda which will aid the court in the determination of said issues. [2 6]

In consonance with the afore-quoted order of the trial court, the appellant submitted his memorandum which opens with the following statements:

> As previously manifested, this Memorandum shall be confined to:
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> (a) the finding in the Commissioner's Report that defendant's defense of estoppel will not lie (pp. 17-18, Report); and
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> (b) the recommendation in the Commissioner's Report that defendant be ordered to pay plaintiff the sum of '$28,000.00 (U.S.) or its equivalent as the fee of the plaintiff under Exhibit 'A' in the IRRI project.'
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> More specifically this Memorandum proposes to demonstrate the *affirmative of three legal issues* posed, namely:
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> *First*: Whether or not plaintiff's letter dated December 11, 1961 (Exhibit 'I') and/or Statement of Account (Exhibit '1-A') therein enclosed has the effect of placing plaintiff in estoppel from thereafter modifying the *representations* made in said letter and Statement of Account or of making plaintiff otherwise bound thereby; or of being decisive or great weight in determining the true intent of the parties as to the amount of the engineering fees owing from defendant to plaintiff;
>
> *Second*: Whether or not defendant can be compelled to pay whatever balance is owing to plaintiff on the IRRI (International Rice and Research Institute) project in United States dollars; and
>
> *Third*: Whether or not in case the ruling of this Honorable Court be that defendant cannot be compelled to pay plaintiff in United States dollars, the dollar-to-peso convertion rate for determining the peso equivalent of whatever balance is owing to plaintiff in connection with the IRRI project should be the 2 to 1 official rate and not any other rate. [2 7]

It is clear, therefore, that what was submitted by appellant to the lower court for resolution did not include the question of correctness or propriety of the amounts due to appellee in connection with the different projects for which the appellee had rendered engineering services. Only legal questions, as above enumerated, were submitted to the trial court for resolution. So much so, that the lower court in another portion of its decision said, as follows:

> The objections to the Commissioner's Report embodied in defendant's memorandum of objections, dated March 18, 1966, cannot likewise be entertained by the Court because at the hearing of the Commissioner's Report the parties had expressly manifested that they had no objection to the findings of facts embodied therein.

We, therefore hold that the third assignment of error of the appellant has no merit.

4. In his fourth assignment of error, appellant questions the award by the lower court of P8,000.00 for attorney's fees. Appellant argues that the Commissioner, in his report, fixed the sum of P5,000.00 as "just and reasonable" attorney's fees, to which amount appellee did not interpose any objection, and by not so objecting he is bound by said finding; and that, moreover, the lower court gave no reason in its decision for increasing the amount to P8,000.00.

Appellee contends that while the parties had not objected to the findings of the Commissioner, the assessment of attorney's fees is always subject to the court's appraisal, and in increasing the recommended fees from P5,000.00 to P8,000.00 the trial court must have taken into consideration certain circumstances which warrant the award of P8,000.00 for attorney's fees.

We believe that the trial court committed no error in this connection. Section 12 of Rule 33 of the Rules of Court, on which the fourth assignment of error is presumably based, provides that when the parties stipulate that a commissioner's findings of fact shall be final, only questions of law arising from the facts mentioned in the report shall thereafter be considered. Consequently, an agreement by the parties to abide by the findings of fact of the commissioner is equivalent to an agreement of facts binding upon them which the court cannot disregard. The question, therefore, is whether or not the estimate of the reasonable fees stated in the report of the Commissioner is a finding of fact.

The report of the Commissioner on this matter reads as follows:

As regards attorney's fees, under the provisions of Art 2208, par (11), the same may be awarded, and considering the number of hearings held in this case, the nature of the case (taking into account the technical nature of the case and the voluminous exhibits offered in evidence), as well as the way the case was handled by counsel, it is believed, *subject to the Court's appraisal of the matter,* that the sum of P5,000.00 is just and reasonable as attorney's fees." [2 8]

It is thus seen that the estimate made by the Commissioner was an expression of belief, or an opinion. An *opinion* is different from a *fact*. The generally recognized distinction between a statement of "fact" and an expression of "opinion" is that whatever is susceptible of exact knowledge is a matter of fact, while that not susceptible of exact knowledge is generally regarded as an expression of opinion. [2 9] It has also been said that the word "fact," as employed in the legal sense includes "those conclusions reached by the trior from shifting testimony, weighing evidence, and passing on the credit of the witnesses, and it does not denote those inferences drawn by the trial court from the facts ascertained and settled by it. [3 0] In the case at bar, the estimate made by the Commissioner of the attorney's fees was an inference from the facts ascertained by him, and is, therefore, not a finding of facts. The trial court was, consequently, not bound by that estimate, in spite of the manifestation of the parties that they had no objection to the findings of facts of the Commissioner in his report. Moreover, under Section 11 of Rule 33 of the Rules of Court, the court may adopt, modify, or reject the report of the commissioner, in whole or in part, and hence, it was within the trial court's authority to increase the recommended attorney's fees of P5,000.00 to P8,000.00. It is a settled rule that the amount of attorney's fees is addressed to the sound discretion of the court. [3 1]

It is true, as appellant contends, that the trial court did not state in the decision the reasons for increasing the attorney's fees. The trial court, however, had adopted the report of the Commissioner, and in adopting the report the trial court is deemed to have adopted the reasons given by the Commissioner in awarding attorney's fees, as stated in the above-quoted portion of the report. Based on the reasons stated in the report, the trial court must have considered that the reasonable attorney's fees should be P8,000.00. Considering that the judgment against the appellant would amount to more than P100,000.00, We believe that the award of P8,000.00 for attorney's fees is reasonable.

5. In his fifth assignment of error appellant urges that he is entitled to relief on his counterclaim. In view of what We have stated in connection with the preceding four assignments of error, We do not consider it necessary to dwell any further on this assignment of error.

WHEREFORE, the decision appealed from is affirmed, with costs against the defendant-appellant. It is so ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Castro, Fernando, Teehankee, Barredo and Villamor, JJ., concur.

 # Footnotes

1 Annex A to complaint, pp. 18-21, Record on Appeal.

2 Record on Appeal, pp. 21-26.

3 Record on Appeal, pp. 115-118.

4 Record on Appeal, p. 96.

5 50 Phil. 810, 821.

6 91 Phil. 46, 49.

7 Coronel, 7 et al. vs. CIR, et al., 24 -SCRA, 990, 996.

8 28 Am. Jur., 2d. , pp. 601-602.

9 Rivers vs. Metropolitan Life Ins. Co. of New York, 6 NY 2d. 3, 5.

10 28 Am. Jur. 2d. p. 642.

11 Art. 1437, Civil Code. 28 Am. Jur. 2d, pp. 640-641; Reyes and Puno, an Outline of Philippine Civil Law, Vol. IV, p. 277.

12 Record on appeal, pp. 95-96.

13 Record on Appeal, p. 155.

14 Ramiro vs. Grato 54 Phil. 744, 750; Coleman vs. Southern Pacific Co., 14 Cal App. 2d 121, 296 P2d 386.

15 Wigmore, Evidence, 3d ed., Vol. IV. pp. 21-23.

16 7 Phil. 20, 22.

17 Corbin On Contracts, Vol. 3, P. 145.

18 Corbin On Contracts, Vol. 3, p. 147, and cases cited therein.

19 In re Chicago & E. 1. Rv. Co., 94 F2d 296; Boucher vs. Godfrey, 178 A 655, 119 Conn 622.

20 Citing 48 CJ, 605, 606-607 in support of his submission.

21 Arthur P. Bacomo Central Bank Circulars and Memoranda, 1949- 1968, p. 389.

22 Rule 131, See. 5, pars. (d) and (g), Rules of Court.

23 47 Phil 115, 142.

24 This ruling modifies the decision in Arrieta vs. National Rice and Corn Corporation, L-15645, January 31, 1964 (10 SCRA 79), where it was held that the obligation based on dollar should be converted into the Philippine peso at the rate of exchange prevailing at the time the obligation was incurred, or on July 1, 1952. The provision of Rep. Act 529 was wrong applied in this case, because the obligation arose after the enactment of Rep. Act 529 (June 16, 1950). The rate of exchange prevailing at the time the obligation was incurred would apply only to obligations that were incurred prior to the enactment of Rep. Act 529, but not to obligations incurred after the enactment of said Act.
25 Record on Appeal, p. 149.

26 Record on Appeal, p. 99.

27 Record on Appeal, pp. 113-115.

28 Record on Appeal, p. 97; emphasis supplied.

29 Pitney Bomes Inc. vs. Sirkle et al., 248 S. W. 2d. 920.

30 Porter vs. Industrial Commission of Wisconsin, et al., 173 Wis. 267, 181 N.W. 317, 318.

31 San Miguel Brewery, Inc. vs. Magno, L-21879, Sept. 29, 1967, 21 SCRA 292.

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